



**MINUTES
SCOTTSDALE PLANNING COMMISSION
KIVA – CITY HALL
3939 N. DRINKWATER BOULEVARD
MARCH 24, 2004**

PRESENT: David Gulino, Chairman
Steve Steinberg, Vice Chairman
David Barnett, Commissioner
James Heitel, Commissioner
Eric Hess, Commissioner
Jeffery Schwartz, Commissioner
Steven Steinke, Commissioner

STAFF: Pat Boomsma
Tim Curtis
Kroy Ekblaw
Kurt Jones
Al Ward
Kira Wauwie
Greg Williams

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Gulino at 5:00 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

MINUTES APPROVAL

March 10, 2004

APPROVED

COMMISSIONER BARNETT MADE A MOTION TO APPROVE THE MARCH 10, 2004 MINUTES AS PRESENTED. SECOND BY COMMISSIONER SCHWARTZ.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

CONTINUANCES

2-TA-2004 (Live Entertainment Text Amendment) request by City of Scottsdale, applicant, for a Text Amendment to amend Ordinance 455 (Zoning Ordinance) Article I., Administration and Procedures., Section 1.403. Additional conditions for specific conditional uses.; Article III. Definitions.; Article V., District Regulations.; Article VII. General Provisions to modify requirements for Live Entertainment uses. **Continued to a date to be determined.**

COMMISSIONER BARNETT MOVED TO CONTINUE CASE 2-TA-2004 TO A DATE TO BE DETERMINED. SECOND BY COMMISSIONER HESS.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

EXPEDITED AGENDA

10-ZN-2003 (Horseman's Park) request by LVA Urban Design Studio, applicant, Horseman's Park LTD Partnership 1, owner, to rezone from Single Family Residential, Planned Community Development, Environmentally Sensitive Lands District (R1-35 PCD ESL) to Single Family Residential, Planned Community Development, Environmentally Sensitive Lands District (R1-5 PCD ESL) on a 2.9 +/- acre parcel north of the northwest corner of 98th Street and McDowell Mountain Ranch Road.

(PULLED TO REGULAR AGENDA)

3-ZN-2004 (Children's Ministry Center – New Covenant Lutheran Church) request by Roberts/Jones Associates Inc, applicant, New Covenant Lutheran Church, owner, to rezone from Commercial Office District, Planned Community Development (C-O PCD) to Single Family Residential District, Planned Community Development (R1-5 PCD) on a 1.98 +/- acre parcel located at 15152 N Frank Lloyd Wright Blvd.

3-UP-2004 (Children's Ministry Center – New Covenant Lutheran Church) request by Roberts/Jones Associates Inc, applicant, New Covenant Lutheran Church, owner for a conditional use permit for a private/charter school (pre-school) on a 1.98 +/- acre parcel located at 15152 N Frank Lloyd Wright Blvd.

4-ZN-2004 (McKnight & Main Office/Residential Building) request by The Clayton Companies, applicant, Tom Frenkel, owner, to rezone from Single Family Residential District, Downtown Overlay (R1-7 DO) to Service Residential District, Downtown Overlay (S-R DO) on a .25 +/- acre parcel located at 7539 McKnight Avenue.

COMMISSIONER BARNETT MOVED TO FORWARD CASES 3-ZN-2004 AND 3-UP-2004 WITH A RECOMMENDATION FOR APPROVAL TO THE CITY COUNCIL SUBJECT TO AMENDED STIPULATIONS AND THAT IT MEETS THE USE PERMIT CRITERIA AND CASE 4-ZN-2004 AS PRESENTED IN THE PACKET. SECOND BY COMMISSIONER STEINKE.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

REGULAR AGENDA

10-ZN-2003 (Horseman's Park) request by LVA Urban Design Studio, applicant, Horseman's Park LTD Partnership 1, owner, to rezone from Single Family Residential, Planned Community Development, Environmentally Sensitive Lands District (R1-35 PCD ESL) to Single Family Residential, Planned Community Development, Environmentally Sensitive Lands District (R1-5 PCD ESL) on a 2.9 +/- acre parcel north of the northwest corner of 98th Street and McDowell Mountain Ranch Road.

MS. WAUWIE presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

WENDY REIDELL, Beus Gilbert, 4800 N. Scottsdale Road, provided a brief overview of the project. She reviewed the planning process. She reported a trail easement would be dedicated along the Old Verde Canal. She further reported one of the issues that has arisen as they talked to the HOA on this case with regard to the trail easement on the Old Verde Canal is that there was concern expressed about construction traffic for this project going through the neighborhood. She further reported that they are sensitive to that and are proposing the following stipulation:

TEMPORARY CONSTRUCTION ACCESS. The developer shall provide temporary construction access extending from the site, across the Old Verde Canal berm, across adjacent property and to McDowell Mountain Ranch Road. This access may require the temporary grading of the Old Verde Canal berm. The developer shall be responsible for obtaining any necessary access easement across the adjacent property. The developer shall also be responsible for the restoring to its natural condition all disturbed areas of the Old Verde Canal and temporary construction access including grading, re-vegetation, and street repair; prior to any final certificate of occupancy of the last lot to be developed in

this subdivision, to the satisfaction of city staff. No construction equipment or vehicles shall enter at the site at 98th Place.

Ms. Reidell stated one of the benefits of this project is that the property owner has worked with Continental and become part of their CC&Rs so this property will be developed in a similar manner. She provided an overview of the neighborhood outreach that has occurred on this project. She noted that after working with the neighbors they have slightly modified the plan. She reported they have a petition from the neighborhood with 15 signatures in support. There is a petition in opposition noting it is interesting that there are six names that appear on both petitions. There is an email explaining why one of those neighbors felt compelled to sign both petitions.

She reported this request is in conformance to the General Plan. They are in conformance with the significant plan. There are no significant traffic impacts. This is an in fill parcel that has elected to become part of the Homeowners Association for the surrounding development. They are limited to a maximum height of 24 feet. There is nearly one acre out of the 2.9 being reserved as natural area open space. They believe this is a good use. They would request the Commission consider their request and the HOA's request for temporary construction traffic on McDowell Mountain Ranch Road.

COMMISSIONER HEITEL inquired if staff was supportive of the proposed stipulation for the temporary construction access. Ms. Reidell stated they were aware of the issue before they talked to the HOA and then they raised it as well so it seemed appropriate to propose the temporary construction access. She further stated that there was some concern expressed that this would become more than a temporary access way. Commissioner Heitel stated if that is the issue a non-vehicle access easement would take care of that once construction is done. Mr. Jones stated from a land use perspective the request to rezone they felt was a logical request. They felt the Verde Canal was a logical place to provide a buffer from the impacts of WestWorld and some other activities south of McDowell Mountain Ranch Road. With this application staff felt that would be preserved as part of the trail easement. Staff had reservations with breaking that and taking down natural vegetation for the construction easement. He added that decision is for the Commission to determine.

Commissioner Heitel inquired if there was a location on the canal that could easily be accessed. Mr. Jones replied that he did not have a definitive answer. He stated he knew that they are required to have NAOS that would have to be re-vegetated as NAOS so staff felt the access through the street system was the best in order to keep everything natural.

CHAIRMAN GULINO inquired if the construction access would come off of McDowell Mountain Ranch Road and follow the canal. Ms. Reidell replied it

would make more sense to come along the eastern property line. Mr. Jones stated another concern was regarding whether the neighbors know about the plan to have construction traffic coming along the back of their lots.

Chairman Gulino stated he did review the two petitions and found six names that appear on both.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY)

CHAIRMAN GULINO stated that there were three cards from people who did not wish to speak that are in opposition of this request and one in support.

LEON SPIRO, 7814 E. Oberlin Way, spoke in opposition of this request. He stated this Planning Commission meeting is to be held under the Arizona open meeting statute. He inquired why the GLO easements are not shown on the site plan or plat of survey. He also inquired if the City plans on issuing building permits to construct permanent structures to block or fence the GLO easement. He stated he would like them to remember the comments made by Attorney Boomsma at a prior meeting.

"The summary of the City's position at this time is that the City is abandoning only its interests in the general land patent office easement. And takes no position whether any private right exists over the easement as that is a matter between private parties and not a matter with the City. The City declines to take a legal position when it does not need to. Regarding liability the City Council has considered the issue at length and had a number of executive sessions and legal memorandum exchanged. It is their position and the City Council's decision to as what legal risk to take in planning matters as well as all other matters. The City Council directed staff and requested the Planning Commission limit inquiries to the planning issues involved as opposed to the legal risk involved."

He requested before considering construction on these easements to ask their attorney whether there are issues involved that could result in legal action.

MR. JONES stated the GLO was abandoned at a previous City Council meeting.

BRADLEY MANHOFF, 16251 N. 98th Place, spoke in opposition to this request. He stated that he lives directly adjacent to the parcel in question. He stated he has been to the majority of the meetings with the developer and his perception of how the meetings went is different. He stated construction traffic is a temporary issue the long-term problem is the impact of the additional traffic on the neighborhood. He further stated one of the things that affected his decision on purchasing his property was knowing that the zoning to that adjacent parcel was R1-35 and there would be a maximum of three homes. He noted that regarding the traffic numbers significance is in the eye of the beholder and he felt the

additional homes would cause a significant traffic increase. He expressed his concerns regarding the value of his home noting that he did not think this proposal would improve the value of his home. He concluded that he felt there were a lot of issues and loose ends that needed to be resolved before a decision is made.

CHAIRMAN GULINO inquired if someone presented to Mr. Manhoff that this would be three homes. Mr. Manhoff replied that Continental Homes said the zoning was R1-35 noting they signed a disclosure document regarding what the zoning was. It was not disclosed that they were in negotiation to change the zoning and if it had been, he would not have bought in this neighborhood.

COMMISSIONER SCHWARTZ inquired if Mr. Manhoff had a copy of the disclosure statement. Mr. Manhoff replied that he did not have one with him tonight but could produce it.

KEITH POSIN, 9853 E. Mirasol Circle, stated that he would agree with a lot of the things that Brad spoke about. He further stated his biggest concern was that he did not feel any of these people have been honest adding that the developer representative advised him that it would be in his best interest to sign the petition. They have not been straightforward. Noting that it would be easy to understand why people signed the petition. He commented he felt the value of his home would decrease with this request. It was his understanding that there would only be three homes not eight. He further commented that the last smaller single story homes are still for sale.

COMMISSIONER SCHWARTZ inquired if Mr. Posin would have purchased his home had he known there would be eight lots on this parcel. Mr. Posin replied in the negative.

DAN FANELLI, 16275 N. 98th Street, spoke in opposition to this request. He stated that he wanted to address the duplication of the petition. He further stated that the applicant led several people to believe that the eight lots were already approved and if they did not sign the petition there would be a good chance the land would become commercial property or multi-family homes. He remarked that he felt it was improperly presented. He further remarked that his biggest concern is the safety of their children that with the addition of the eight homes verses the three there will be an increase in the traffic. He expressed his concerns regarding the negative impact this request would have on their home values.

VICE CHAIRMAN STEINBERG inquired if this were built as presented if it would be part of the existing Continental development. Mr. Jones stated that is a private issue they could ask to be part of it.

JERAME PEARSON, 9837 E. Mirasol Circle, requested they ensure the safety and well being of the residents of Horseman's Park by leaving the zoning unchanged any other zoning would be a detriment to the character and charm of the community the very reason they live in this area.

GERRY HRENCHIR, 16195 N. 99th Place, spoke in opposition to this request. He stated he is the President of the HOA for Horseman's Park. He further stated the party proposing the zoning change presented to the Association last week and it was presented that it was a done deal. When they walked away from the meeting there was a lot of concern about the proposed change in the zoning. It was proposed when they purchased their property that the zoning would stay at three homes for that property. They are very concerned about the increased traffic and the safety aspect. He noted he has been through the neighbor and talked to neighbors and has not spoken with anyone who understands this proposal that is in support.

JIM LEWALLEN, 9877 E. Mirasol Circle, spoke in opposition to this request. He stated he would implore the Commission that whichever decision is made that they take construction in McDowell Mountain Ranch Road explaining why that makes sense.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY)

MS. REIDELL stated that she was utterly offended by the suggestion that they went to the neighborhood and told them this was a done deal. She presented a letter that was handed out to the individual homeowners that clearly stated the approval process. At the meetings, they discussed what was involved with the approval process. She stated regarding the timing noting there was not overlap with regard to the timing and Continental Homes were not under contract to purchase this. She remarked this request is consistent with the surrounding property and it conforms to the surrounding property. She further remarked they have taken it upon themselves to annex into the CC&Rs for the surrounding development. She reported these are not smaller homes or smaller lots. She noted it was brought up that the single story homes have not sold they checked and there are only three single stories out of the 103 single story homes that have not sold. There is ample market for these homes and would increase the value of the existing homes. This plan is consistent with the General Plan and the specific plan. They would respectfully request approval.

COMMISSIONER HEITEL inquired if the access for this subdivision is going to be out toward the northwest to 98th. Ms. Reidell replied in the affirmative. Commissioner Heitel requested they work with staff to find a location for the construction easement that would limit the destruction of the existing vegetation and that alignment could be kept away from adjoining property owners on the east and perhaps they could follow the existing disturbed trail. Ms. Reidell stated

they would be happy to work with staff to ensure the least amount of disturbance. She noted that the sewer would come through this area and any impact caused by the sewer to this property would be restored.

COMMISSIONER STEINKE stated that this Commission is a recommending board and they consider the impacts on the environment, to the homeowners and all the impacts involved noting there is criteria that is used to base their judgment. They do have those factors put into their minds at the time they make those decisions. He further stated that he felt all of the presentations made this evening show forthright concern about the development of this area.

COMMISSIONER SCHWARTZ MOVED TO FORWARD CASE 10-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL WITH THE ADDITION OF THE STIPULATIONS AS SET FORTH BY BEUS GILBERT REGARDING THE SEWER EASEMENT OR TRACT AND TEMPORARY CONSTRUCTION ACCESS. SECOND BY COMMISSIONER BARNETT.

CHAIRMAN GULINO stated from a land use perspective he had no dispute with what is presented. The site plan is good. He further stated there are some other issues that have been raised tonight that are important but beyond the purview of the Commission many having to do with what was represented to folks when they bought their property. He remarked that he was sympathetic but strictly, from a land use perspective this proposal is consistent with the character of the neighborhood. He concluded he would support the motion.

Chairman Gulino called for the vote.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

2-ZN-2004 (Scottsdale National) request by City of Scottsdale, applicant, Scottsdale 275 LLC, owner, to rezone from Single Family Residential, Environmentally Sensitive Lands District (R1-190 ESL) to Single Family Residential, Environmentally Sensitive Lands District (R1-190 ESL and R1-70 ESL) on 30 +/- acre property located at the southeast corner of Rio Verde Drive and 136th Street.

MR. JONES presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations. He reported the landowner is present and is in agreement with the attached stipulations.

CHAIRMAN GULINO inquired if the city was the applicant and not the property owner. Mr. Jones replied in the affirmative.

COMMISSIONER HEITEL stated on the trail issue there is a reference in the narrative to a 35-foot trail easement along Dynamite Road but no reference to

the other trails along 136th. He inquired if the trail was on the west side. Mr. Jones replied the trail would be on the west side on the 136th Street alignment. Commissioner Heitel inquired if the equestrian trail would be abutted up to the road or sidewalk. Mr. Jones replied it is a separated trail.

COMMISSIONER BARNETT inquired if Attachment 12, the proposed house sites, is not actually a site plan but just a suggestion by city staff of where possible construction envelopes could go. Mr. Jones replied in the affirmative.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY)

CHAIRMAN GULINO stated there were six cards from people who did not wish to speak but were in favor of this request.

BARON BRANDSTROM, 13880 N. Northsight Blvd, spoke in support of this request. He stated that he just spoke with the developer representative concerning this property and he has indicated they are willing to do horse trails at the bottom corner of the property. He further stated that people are concerned about access to 136th Street and because they are not doing many changes and they are willing to do the buffer he would support this request.

SAM WEST, 8160 N. Hayden Road No. I-210, stated he is a property owner two miles north and one-mile east. He further stated that he is the Chair of the Area Development Committee and the Rio Verde Horseman's Association. He reported that he emailed them yesterday a list of the issues they are concerned with. He further reported that he met with Mr. Lane a few minutes ago out front and discussed a lot of the issues. He remarked that he was impressed with the 13 units, the size, the spacing, and what they are trying to do to protect the desert. He further remarked he would like to compliment them on the commitment to get a trail that connects in two places. They also discussed the issue of having something in the CC&Rs regarding the right to have equestrian use in this area. He reported that there are several other issues that he would not go into that they have gotten a verbal agreement.

He stated there are a couple of things related to the stipulations that when he read it he perceived conflicts. One of the concerns is regarding walls surrounding the residents. The stipulations talked about those walls being setback to the setback line on lots. There is another place in the stipulations that talks about more free form and just enclosing the building envelope. In their discussion, they both agreed that the walls were actually to be stipulated to enclose the building envelope and not necessarily go to the setback line.

He noted the stipulations discuss streetlights. Their position is that they do not want streetlights. He further noted with regard to the street design they need to follow the contours of the site and they don't need eight foot cut and fills in the

desert. He remarked there are issues regarding drainage that he felt at this time could not be answered. There should be no mass grading. He further remarked the stipulations talk about an eight- percent slope away from sidewalks and streets and in the desert, that might cause a problem. In the design there should be ribbon curbs so, the sheet flows off the street rather than concentrated flow. He added he wanted to discuss these issues now because when this gets to the DR Board there is nothing he could say at that time.

COMMISSIONER HEITEL inquired if Mr. West was suggesting that the 136th Street design be changed to a lower street design standard or that it be a design standard that is more rural in character. Mr. West stated 136th Street will go one-mile south and dead end at the park so there will never be any meaningful traffic. He further stated that it would be more like a residential street so he would like to see the configuration more like that rather than a curb and gutter street. Commissioner Heitel inquired about the street speed for that street. Mr. Ekblaw stated he did not know what the street speed would be yet. He further stated that he understands there are concerns about the character and staff can address that.

CHAIRMAN GULINO stated the city has guidelines and standards that unfortunately don't always fit regarding street standards. He further stated that they need to encourage the Transportation Department to start thinking outside of the box because some of the street designations might not make sense in some areas. He remarked the traffic on 136th Street does not justify being a minor collector. And in this area it might make more sense to designate it a local residential street, which brings the right-of-way narrower and brings the design speed down and allows them to follow the natural contours of the land and start meeting the intent of ESL a little better.

COMMISSIONER HEITEL stated that is exactly where he was going. He further stated he would like to see a stipulation requiring staff to move forward with the rural character design for the street. He inquired if he understood that there are no perimeter walls on this property. Mr. Jones replied in the affirmative.

COMMISSIONER SCHWARTZ inquired about Mr. West's arrangement with Mr. Lane on the width of the trail to bisect that property. Mr. West reported that they did not discuss width of the trail. He further reported they did discuss issues that go with the trail on Dynamite and it was his perception he would be very sensitive to those issues. He noted he felt this trail should be limited to equestrian.

Commissioner Schwartz stated his point is that there needs to be an understanding so that it is clear that they are not going to exceed a certain width. He further stated that he felt Mr. Lane has done a great job working with the residents to accommodate the horse trail. Mr. Ekblaw stated he spoke to the property owner and that section of wash the owner is willing to commit to a 20

foot easement which is more than the standard trail developed within that area. There would still be the trail easement along Dynamite within the 100-foot scenic corridor setback. Mr. West stated that he would suggest something wider maybe in the 25 to 35 foot range.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY)

COMMISSIONER BARNETT stated he felt Mr. West has brought up good points regarding some of the stipulations they either want in or out. He inquired if this was something where they could address some of the stipulations in a different manner and bring it back in two weeks to forward on. Is anyone in favor of a continuance. Chairman Gulino stated he did not get the sense that the Commission wanted a continuance, but that they should make some modifications to the stipulations. Mr. Jones replied with regard to the trail stipulation they could add a stipulation that defines the width of the easement through the major wash. With regard to a lot of Mr. West's concerns the new ESL will take care of a lot of the building envelopes, roadways and they could add a caveat to the roadway design stipulations that unless otherwise approved Transportation General Manager gives them authority to modify 136th Street from minor collector to something lower.

CHAIRMAN GULINO stated that he would disagree with Mr. West that there is a lot more leverage at the DR level than he gives credit. He further stated that he did have concerns about the cuts and fills on the project and would like to see that added to the list of issues that DR Board pays attention.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 2-ZN-2004 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL WITH THE FOLLOWING ADDED STIPULATIONS:

- 1) **AN EQUESTRIAN NON-MOTORIZED TRAIL BE LOCATED IN SUBSTANTIAL CONFORMANCE WITH MR. WEST'S HAND DRAWING THAT HE PROVIDED THEM THAT HE HAS HAD DISCUSSIONS WITH THE APPLICANT.**
- 2) **INSTRUCT THE STREET TRANSPORTATION IN REGARDS TO 136TH STREET ROAD CATEGORY THAT IT BE BUILT OR RECLASSIFIED AS RURAL NEIGHBORHOOD ROAD SIMILAR TO WHAT THEY HAVE IN THE DESERT FOOTHILLS CROSS SECTIONS.**
- 3) **NO FILLING IN OR CONSTRUCTION BE ALLOWED IN THE EXISTING WASH THAT SEPARATES THIS R1-70 AND R1-190 PARCEL.**
- 4) **THE DRB PAY PARTICULAR ATTENTION TO ADDITIONAL CUTS AND FILLS IN THE AREA.**

MR. EKBLAW requested they add one thing to the planning stipulations that there is a maximum of 13 lots.

COMMISSIONER HEITEL ADDED THERE BE A MAXIMUM OF 13 LOTS IN GENERAL CONFORMANCE WITH THE ATTACHED SITE PLAN.

COMMISSIONER SCHWARTZ SECONDED THE MOTION WITH THE CLARIFICATION THAT THE TRAIL EASEMENT THAT WAS GRANTED FOR HORSES IS 20 FEET WIDE THROUGH THE WASH. COMMISSIONER HEITEL STATED HE AGREED. THE EQUESTRIAN TRAIL WOULD BE 20 FEET.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 6:35 p.m.

Respectfully Submitted,

"For the Record " Court Reporters